



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 97-6-4

Issued by the Department of Transportation
on the 4th day of June 1997

SERVED: JUNE 4, 1997

**1997 U.S.-CHILE COMBINATION SERVICE
PROCEEDING**

Docket OST-97-2586

Application of

**CONTINENTAL AIRLINES, INC.
UNITED AIR LINES, INC.**

**Docket OST-97-2373
OST-97-2371**

for allocation of seven weekly U.S.-Chile combination
frequencies

Application of

DELTA AIR LINES, INC.

Docket OST-97-2372

for new or amended certificate of public convenience and
necessity pursuant to 49 U.S.C. § 41102 and for
designation and allocation of U.S.-Chile frequencies

ORDER INSTITUTING PROCEEDING

Summary

By this order we institute the **1997 U.S.-Chile Combination Service Proceeding, Docket OST-97-2586**, to select a carrier(s) to operate the seven frequencies available for additional U.S.-Chile services effective December 15, 1997. We consolidate the frequency applications of

Continental Airlines, Inc., and United Air Lines, Inc., and the certificate/frequency application of Delta Air Lines, Inc. into this proceeding.

Background

Under an Exchange of Notes completed March 13, 1997, the United States and Chile agreed to amend, effective December 1, 1996, the 1993 Capacity Agreement, as amended and extended, so as to permit the designated airlines of the United States to operate up to a combined total of seven (7) additional weekly nonstop flights between authorized points in the United States and authorized points in Chile, on a year-round basis, effective December 15, 1997. By Notice served April 8, 1997, the Department solicited applications from carriers interested in using these frequencies. Applications were due April 22, 1997; answers, April 29, 1997; and replies, May 5, 1997.

American and United now provide direct scheduled combination services to Chile and hold certificate authority for U.S.-Chile services.¹ Continental also holds certificate authority for U.S.-Chile services.²

Applications and Responsive Pleadings

Three carriers--Continental, Delta, and United--filed applications in response to our April 8 Notice. Continental and United filed applications for frequency allocations, and Delta filed an application for new certificate authority and a frequency allocation to support its proposed services.

Under their proposals, Continental would operate daily nonstop service between Newark and Santiago; Delta would provide daily service between Atlanta and Santiago (possibly via an intermediate point(s)) with behind gateway service to/from its hub in Cincinnati; and United would operate daily service between Miami and Santiago via Sao Paulo. A summary of the carriers' applications and of the pleadings filed in response is attached in Appendix A.

Decision

We have decided to institute the **1997 U.S.-Chile Combination Service Proceeding** to allocate the seven frequencies available December 15, 1997, for U.S.-Chile combination service.

The principal purpose of this case is to examine the long-term air service needs of the U.S.-Chile market and which U.S. airline(s) can best meet them. We intend to process this case on an expedited procedural schedule to facilitate a timely final decision in this case. Since we have

¹ American has been allocated 21 weekly frequencies: 14 for nonstop services on a year-round basis and 7 for nonstop services on a seasonal basis. United has been allocated 14 weekly frequencies: 7 for year-round nonstop services and 7 for one-stop services. In its Notice soliciting applications, the Department stated that those frequencies would not be at issue in this proceeding. See April 8, 1997, Notice at 2.

²See Orders 92-11-46 and 86-10-57.

already solicited applications for the newly available authority, we will not accept additional applications for the authority at issue.

Whether authorizing a carrier(s) for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute valuable rights obtained in exchange for granting Chile route opportunities for its airlines to serve the United States. The introduction of additional U.S. carrier service will provide new service options to travelers and shippers and will enhance competition in the U.S.-Chile market. In these circumstances, we find that the public interest clearly calls for use of the rights and that the three applicants here should be able to compete for those rights.

In determining which carriers/gateways will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Chile market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.³

The U.S.-Chile agreement provides for intermediate and beyond services. We are prepared to consider in this proceeding the award of intermediate and/or beyond authority set forth in the agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreements.

In order to assure that the valuable route rights are not wasted, we will consider issuance of backup authority in this proceeding should the selected carrier(s) not operate the proposed services. The carriers in this case have proposed service from different gateways. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure continuation of service from a particular gateway.

³ United argues that until all carriers file their service schedules for their proposed operations, the Department cannot conduct a comparative hearing necessary to determine which carrier(s) should be allocated the available frequencies in this case. However, all carriers plainly have provided sufficient information for the Department to determine that the applications filed satisfy the requirements of our April 8 Notice and are mutually exclusive under *Ashbacker* such that carrier selection procedures are necessary to allocate the available frequencies in a comparative proceeding. As is routinely the case in such proceedings, all carriers will be required to submit their definitive schedules at the direct exhibit stage, at which time the other applicants will have a full opportunity to comment on those schedules as well as other aspects of each applicant's service proposal, thereby providing the necessary record for comparative decision.

We have decided not to place at issue in this proceeding the four one-stop frequencies held by United but not currently being operated. United has been allocated a total of fourteen weekly frequencies, seven of which may be operated on a nonstop basis and seven of which must be operated on a one-stop basis. Continental argues that four of United's one-stop flights are not being used and should be placed at issue in this proceeding together with the seven frequencies available December 15. United acknowledges the non-use of these four flights. It states that it has wanted to use those four frequencies to expand its Miami-Lima-Santiago services to a daily operation, but that the Peruvian Government approval has not yet been forthcoming. The U.S. Government has in fact been working with United and with the Peruvian Government in an effort to secure such approval. In these circumstances, we do not regard these one-stop frequencies as dormant in a way that would justify their inclusion in this proceeding. As with use of any valuable right, we do not intend to allow these rights to remain unused indefinitely. When they are deemed dormant, we would be prepared to allocate them in a separate proceeding to other carriers that may be interested.

Procedures and Evidence

In view of the imminent availability of the route rights, we will expedite the schedule for this proceeding to facilitate operations by the selected carrier(s) by the December 15 effective date of the new route rights. We believe that written, non-oral show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that no applicant requested oral evidentiary procedures. As noted above, however, we do intend to process this case on an expedited schedule to facilitate timely inauguration of service by the selected carriers. This case, which is subject to Rule 22a(d) of our procedural regulations [14 CFR 302.22a(d)], will be assigned to the Department's Senior Career Official, who will be the DOT decisionmaker in this proceeding.

We have appended to this order an evidence request for the benefit of the parties in this case. In addition to the material requested, applicants and any other parties may submit any additional information that they believe will be useful to us in reaching a decision.

We will also require American and United, the U.S. carriers currently providing combination service in the U.S.-Chile market, whether or not they participate in this proceeding, to file the service data set forth in the attached Appendix (Appendix B at 2, Section III A.2). We believe that such data are necessary for a complete record in this case, and therefore, we are exercising our power under 49 U.S.C. 41708 to require these carriers to file these data.

Consistent with our policy with respect to limited entry route rights, should we select an applicant without requisite certificate authority, we will award the U.S.-Chile authority at issue in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c). The duration of authority will be five years for the primary

carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years.⁴

Consistent with our standard practice, the frequencies allocated in this proceeding will be for one year's duration and will be subject to our standard 90-day dormancy condition, wherein frequencies will be deemed dormant if they are not operated for 90 days, except where service in the market is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition, if flights allocated are not used for 90 days, the frequency allocations expire automatically, and the frequencies revert back to the Department for reallocation so that they can be available for other carriers on an immediate basis should they seek to use them.

Procedural Timetable

The Exchange of Notes provides valuable new rights for U.S. carriers to serve Chile effective December 15, 1997. We believe that it is in the public interest to select a carrier(s) on a timetable that will allow the selected carrier(s) to enjoy the maximum benefit of these rights as close to the date available as possible. Therefore, we intend to proceed on an expedited basis. To this end, we are establishing the following procedural schedule for submissions in this case:

DOT Information Responses:	June 6, 1997
Petitions for reconsideration of instituting order:	June 9, 1997
Answers to petitions for reconsideration:	June 11, 1997
Carrier Information Responses:	June 11, 1997
Direct Exhibits:	July 1, 1997
Rebuttal Exhibits:	July 22, 1997
Briefs:	August 12, 1997

All dates are delivery dates. An original and four copies of all submissions are to be received by the Department of Transportation, Dockets, no later than the dates indicated.⁵ Due to the expedited nature of this case, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

ACCORDINGLY,

1. We institute the **1997 U.S.-Chile Combination Service Proceeding**, Docket **OST-97-2586** to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);

⁴ See Section 399.120 of our regulations. We remind the applicants that it is our practice to issue certificate authority only for the markets the carriers actually have submitted a proposal to serve.

⁵

expedite use of our docket imaging system.

2. The proceeding instituted in ordering paragraph 1, above, will consider the following issues:
 - a. Which primary and backup carrier(s)/gateways should be selected for service between a point in the United States and a point or points in Chile, consistent with the provisions of the March 1997 Exchange of Notes;
 - b. How should the available frequencies be allocated among the newly selected and/or incumbent carriers for a one-year period;
 - c. What other authorities, including route integration authority, should be granted in conjunction with the Chilean services authorized in this proceeding; and
 - d. What terms, conditions, and limitations should be imposed on any existing certificate authority, and any new certificate authority awarded in this proceeding;
3. We consolidate the applications of Continental Airlines, Inc., Docket OST-97-2373, Delta Air Lines, Inc., Docket OST-97-2372, and United Air Lines, Inc., Docket OST-97-2371, into the **1997 U.S.-Chile Combination Service Proceeding**, Docket **OST-97-2586**;
4. We require that petitions for reconsideration of this order be filed no later than June 9, 1997; answers to such petitions shall be due no later than June 11, 1997;
5. We require all incumbent carriers whether or not they seek new or additional authority in this proceeding to file the incumbent carrier data requested in section III.A.2 of the attached evidence request; and
6. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; the Regional Business Partnership (Newark); the Ambassador of Chile in Washington, DC; and the U.S. Department of State (Office of Aviation Negotiations).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Summary of Applications

Continental seeks authority to provide seven weekly U.S.-Chile combination flights between Newark and Santiago with DC-10-30 aircraft. Continental plans to initiate service between Newark and Santiago either 120 days after the Department's decision to award it frequencies or December 15, 1997, whichever is later. Continental states that it already holds the necessary underlying authority to serve Chile and requires only a frequency allocation to provide its proposed services.

Delta seeks new or amended certificate authority to provide scheduled combination service from a point or points in the United States via intermediate points (including but not limited to points in Brazil) to Arica, Antofagasta, and Santiago, Chile, and beyond, and to combine this authority with Delta's other certificate and exemption authority consistent with applicable international understandings. Delta also requests designation and allocation of seven (7) U.S.-Chile frequencies and further requests that the authority be made effective for a term of five (5) years. Delta states that it will initially serve the Atlanta-Santiago market (possibly via intermediate points) with single-plane behind-the-gateway service to/from its hub in Cincinnati with Boeing 767-300ER aircraft and that its definitive service proposal will be set forth in Direct Exhibits upon institution of a carrier selection proceeding. Delta states its proposed startup date is December 15, 1997, or ninety (90) days after receipt of governmental approvals, whichever is later.

United seeks allocation of seven (7) weekly frequencies in order to offer daily service between the United States and Santiago by extending an existing daily Miami-Sao Paulo flight, effective December 15, 1997. United states that it already holds the necessary underlying authority to operate between Miami and Santiago and between points in the United States and Brazil and beyond to points in Chile, and that its proposed services are consistent with the bilateral air service agreements between the United States and both Chile and Brazil. It further notes that the aircraft which are proposed for United's services (Boeing 777-222) are currently used in Brazil services and are unused for several hours a day, during which times United proposes to use the aircraft for its Chile services.

Responsive Pleadings

Each of the applicants filed consolidated answers and replies. The Regional Business Partnership (Newark) filed an answer in support of Continental's application.

Each applicant carrier argues that its application is superior to that of the others and objects to any other carrier's application to the extent that it would preclude approval of its own application.

Continental states that it is the only airline committed to nonstop service between the United States and Chile and will offer first nonstop service in the second largest U.S.-Chile market. It urges the Department to institute highly streamlined proceedings for award of the available authority. Continental argues that United proposes to duplicate 10 weekly Miami-Santiago

services it already offers, that Delta did not submit a definitive proposal, and that unless Delta specifies the intermediate points, its application should not be considered. Moreover, Continental argues that United should not receive additional frequencies since it already has dormant frequencies at hand and its proposed services offer no meaningful option to flights already provided. In addition, because United is not using all of its frequencies, Continental argues that the Department must request applications for the four one-stop frequencies not being operated by United and to allocate them as well so that valuable operating rights are not wasted. To this end, Continental suggests that the Department should award Continental the seven weekly nonstop frequencies and require Delta and United to compete for the four weekly one-stop frequencies available.

Delta states that an award to Delta will maximize the public benefits and competition between the United States and Chile. It maintains that Delta is the only applicant proposing to establish a new U.S. gateway to Chile and the only applicant proposing services from two major hubs which will enable it to provide unsurpassed levels of network competition against incumbent U.S. and foreign carriers. Delta objects to Continental's suggestion that the Delta application be dismissed for not submitting a definitive service proposal, stating that Delta complied with the Department's Notice by stating the markets it plans to serve, and that it will submit a definitive service proposal in its direct exhibits upon institution of a carrier selection case.

United states that it cannot comment on the proposals of Continental and Delta until they submit their schedules and urges the Department to direct the carriers to submit their schedules and any other information the Department deems relevant to enable it to conduct a comparative hearing. United also submits that the Department cannot conduct a comparative hearing required under Ashbacker until Continental and Delta submit their schedules. United argues that Continental has not indicated where or when it will acquire the necessary aircraft to operate over its proposed routing. United maintains that it is the only applicant that has shown it is fit, willing and able to operate its proposed services. In response to Continental's questions regarding four unused frequencies, United states that it plans to use those four frequencies to expand its Miami-Lima-Santiago services to a daily operation, but those services are limited by the terms of the U.S.-Peru bilateral to three frequencies per week; that United is working with both the U.S. and Peruvian governments toward increasing its services to daily and will increase these services to daily immediately once the opportunity becomes available. United further argues that it needs its existing U.S.-Chile one-stop frequency allocation to implement this plan. Moreover, United argues that it needs additional frequencies to offer effective competition with American at Santiago.

The Regional Business Partnership (Newark) supports Continental's application for Newark-Santiago service. It states that there is no nonstop service between any of the three Newark/New York area airports and Santiago, and that the only single-plane services linking Santiago with the Newark/New York market are offered by foreign air carriers at John F. Kennedy International Airport. Newark further states that there is great demand for the proposed Newark-Santiago service.

EVIDENCE REQUEST

I. Public Disclosure of Data

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1994, through final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1990, through final Department decision in this proceeding, for operations between the United States and Chile, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

II. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

III. Request for Information and Evidence

A. Information Responses

1. DOT Data

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:¹

- (a) T-100 nonstop segment data, by month, beginning January 1, 1994, through the latest available month, between the United States, on the one hand, and Chile, on the other.
- (b) T-100 on-flight market data, by month, beginning January 1, 1994, through the latest available month, between the United States, on the one hand, and Chile, on the other.

¹ Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of the information requests on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Economic & Financial Analysis Division, at (202) 366-2352. The Department will make this material available no later than the date specified in the text of this order.

Use of the O&D data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

(c) For the Calendar Years 1990 through September 30, 1996, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Arica, Antofagasta, and Santiago, Chile.

(d) For the 12 months ended September 30, 1996, from the Department's O&D Survey between all U.S. points, on the one hand, and Arica, Antofagasta, and Santiago, Chile, on the other, that used the following gateways: Miami, Orlando, New York, Los Angeles, San Juan, Atlanta, and "all others."

2. Incumbent Data (American and United)

For each month for the twelve months' ended May 1997, provide the number of flights and complete flight itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Chile market, and the type aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified.

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. This information shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand, particularly if the source is other than the Department's O&D Survey. Indicate growth rates, stimulation rates, and participation rates, as well as the bases for such rates.²

The source data for traffic forecasts made by any party shall be (1) the O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources. Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data).

² The base year for traffic forecasting purposes should be 12 months ended September 30, 1996, and the forecast year should be the 12 months ended December 31, 1998.

1. Applicant Carriers

Submit, at a minimum, the following:³

(a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending December 31, 1998).

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

(b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending December 31, 1998. The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;

(c) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate

³ The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street, SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel® (version 5.x or earlier), Lotus 1-2-3® (version 3.x or earlier), Microsoft Word® (version 6.x or earlier), or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties using other software may either (1) file IRs, exhibits and briefs in the foregoing formats, or (2) contact the Office of Aviation Analysis at either 202-366-2352 or 202-366-1041 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

(d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;

(e) A description of any existing or proposed code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Chile service operated by a foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s).⁴ If in an existing code-share relationship with carriers involving the U.S.-Chile market, provide in detail a description of whether proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partners. Any carrier operating under a code-share agreement that has not filed that agreement with the Department, should provide a copy of that agreement in its direct exhibits. If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served and traffic forecasts.

(f) Responses to the following interrogatories:⁵

(1) Will the carrier, if selected as backup, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

(2) Will the carrier selected for primary authority accept a condition in the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

⁴ Traffic forecasts under III.B.1(b), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

⁵ Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate or frequency allocation issued will be for one year.